

Tuesday next after the first Monday of the month of November, 1864."

There may be a little infelicity in that phraseology; but it is the precise phraseology of the act of Congress of 1845, in reference to the appointment of electors for President and Vice-President of the United States. This perhaps is as good a year to illustrate the matter as we shall ever have. The Tuesday next after the first Monday, is, of course, not necessarily the first Tuesday in the month. It so happens that this year Tuesday is the first day of November; and the Tuesday next after the first Monday in November is the eighth day of the month. Therefore, if the section reported by the committee be adopted, we should have an election for State officers and senators and delegates upon the first Wednesday of November, being the second day of the month; and then within less than a week, on the following Tuesday, we should have an election for presidential electors. I therefore move to strike out the words "first Wednesday," and insert the words, "Tuesday next after the first Monday of the month." That will bring the elections for State and national officers on the same day.

The question being then taken, the amendment of Mr. SROCKBRIDGE was agreed to.

Mr. CLARKE. I move to further amend this section by striking out the last clause, being the following words:

"And the election for representatives from this State in the Congress of the United States shall take place on the same day."

My attention has been called to this subject simply upon the reading of the section this morning. I will submit what views I have formed thus hastily in reference to this provision of this section. It now reads—"The election for representatives from this State in the Congress of the United States shall take place on the same day." The first clause of section four, article one, of the Constitution of the United States provides—

"The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the Legislature thereof."

My first objection to the proposed provision in our Constitution is that it is transcending our power under the Constitution of the United States. We have taken an oath to support the Constitution of the United States. One of the most express and clear provisions of that Constitution is that the Legislature shall fix the time for electing senators and representatives in Congress. The naming the Legislature of the State is, of course, an exclusion of the Constitutional Convention, or any other body in the State, other than the Legislature, undertaking to fix the day of election. That proposition appears to be too clear for argument. We are, by this provision, undertaking to violate the Constitution of the United States, and to assume a power

which the Constitution of the United States in direct terms gives to another authority in the State. And I might say further that the expression of this power in one body operates to the exclusion of the power to all other bodies. When gentlemen undertake to form a Constitution for the State, and deal with high questions of constitutional law, it will not do to say that it makes no difference in changing the time. We are here to act as men who know our rights under the Constitution, and our obligations, too. We are here called upon to assume a power which the Constitution of the United States does not give us. And I oppose this provision upon the ground that it would be a violation of the Constitution of the United States, and an assumption upon the part of this Convention of a power which it has no right to exercise.

It is replied that the provision of the code brings the day of electing members of Congress upon the same day that is fixed by this provision. And hence we do not change the time; we do not at all violate our duties in inserting this provision in our Constitution. Section 76, of the code, on page 271, is as follows:

"The election of representatives of this State in the Congress of the United States, shall be on the same day as the election for members of the General Assembly of this State, unless there should be a special meeting of Congress called by the President of the United States, to be holden previous to such day, and after the expiration of the term of service of said representatives; in which event the Governor shall, by proclamation, direct such election to be held on a day therein named by him."

I turn now to the first clause of section two, of article one, of the Constitution of the United States, which reads as follows:

"The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."

Now, when was there an election in the State of Maryland for members of Congress? There was an election last fall, and the clause of the Constitution of the United States which I have just read provides that they shall be chosen every second year. Now, if we undertake in violation of the power we have under the fourth section of the first article of the Constitution of the United States, what right is there under the Constitution of the United States to elect members of Congress at that time?

Mr. STIRLING. I will put this question to the gentleman: Suppose an election was held, as in this State last fall, for members of Congress; and after the terms of those members have expired, but not two years after the last fall election, a special session of Congress is